



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

March 24, 2008

The Honorable Judith T. Spang, Chairman
Resources, Recreation and Development Committee
Legislative Office Building, Room 305
Concord, New Hampshire 03301

Re: SB 519-FN, imposing a per diem fine on dam owners and operators for failure to repair damage

Dear Chairman Spang:

Thank you for the opportunity to testify on SB 519-FN, which would amend RSA chapter 482 (Dams, Mills and Flowage) to enhance its enforcement and penalty provisions. If enacted, the bill would increase the amount of the fines that the Department of Environmental Services (DES) could impose on dam owners for failure to comply with an agency administrative order. It would also allow DES to impose fines on dam owners for failure to perform required maintenance work on their dams. DES supports SB 519-FN because we believe that the bill's enhanced enforcement provisions will improve compliance with state dam safety requirements.

Under the bill, the penalties that DES could impose on dam owners for failure to comply with an order of the department are increased from \$2,000 to \$5,000 per violation, with each day of noncompliance constituting a separate violation. In addition, the bill provides that a court could impose a fine of \$20,000 for a violation of state dam safety statutes. With these changes, the penalty provisions for New Hampshire's dam safety statutes will be consistent with the penalty provisions in statutes governing other DES programs, such as the Comprehensive Shoreland Protection Act.

The bill also would authorize DES to impose an administrative fine for the failure by a dam owner to perform maintenance on the dam. Under current law, DES can impose fines only if the dam falls into disrepair. By giving DES the authority to issue fines for the failure of a dam owner to perform needed maintenance work, the bill will help ensure that timely maintenance is performed and that dams do not deteriorate to the point where they pose a threat of actual failure.

DES inspects, on a schedule based on hazard classification, all of the dams in New Hampshire that could cause loss of life or property damage if they were to fail. This inspection program has identified approximately 114 dams with known deficiencies at the present time. Most of these deficiencies relate to issues that can be corrected by the appropriate maintenance work, such as removal of trees and brush and the installation of erosion control measures. While they do not usually pose an imminent threat to the safety of a dam, it is important that recognized maintenance deficiencies be addressed in a timely manner, to protect the dam from unnecessary deterioration and to prolong its life. As with most structures, a poorly maintained dam will

The Honorable Judith T. Spang, Chairman
March 24, 2008
Page 2 of 2

deteriorate and will eventually fail.

When deficiencies in a dam are identified, it is DES practice to issue the dam owner a letter of deficiency that proposes a voluntary schedule to perform the required maintenance. However, some dam owners fail to comply with informal requests for compliance. A legally enforceable administrative order directing the specific maintenance work be completed by established deadlines is then sent to the person responsible for the dam. In some cases, it takes the further assessment of administrative fines, or an injunction order by the superior court and the imposition of civil penalties, to ensure that deficiencies in a dam are corrected.

By authorizing DES to impose fines on dam owners for failure to perform maintenance required by an administrative order, and by increasing the administrative fines and civil penalties for violating state dam safety requirements, this bill will improve the State's ability to ensure that deficiencies are corrected in a timely manner so as to prevent dams from falling in disrepair, potentially threatening lives and property located downstream. DES supports the enactment of SB 519-FN.

After this bill was introduced in the Senate, it was amended at the request of the Granite State Hydropower Association to insert Paragraph X, which essentially exempts hydropower dams that are regulated by the Federal Energy Commission (FERC) under the Federal Power Act from the penalty provisions of the bill. It has been well-established under federal case law that the Federal Power Act preempts DES authority under state law to impose dam safety requirements over projects that are subject to FERC jurisdiction. For this reason, DES did not oppose the amendment. DES will continue to inspect these projects on a regularly-scheduled basis, and will work through FERC to ensure that any deficiencies identified by DES are promptly corrected.

If there are any questions regarding this letter of testimony, please contact either Jim Gallagher at 271-1961 or me at 271-2958.

Very truly yours,


Thomas S. Burack
Commissioner

cc: Senator Jacalyn Cilley
Senator Betsi DeVries
Senator Martha Fuller Clark
Representative Susi Nord